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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

AUDIT REFERRAL: 07-03
DATE REFERRED: May 23, 2007
DATE ACTIVATED: June 18, 2007

STATUTE OF LIMITATIONS: Feb 6, 2008 -
October 13, 2009¹

SOURCE: AUDIT REFERRAL

RESPONDENTS: Istook for Congress and James R. Hale, in his official
capacity as treasurer
Ernest Istook
Kyle Loveless

**RELEVANT STATUTES
AND REGULATIONS:** 2 U.S.C. § 434(b)
2 U.S.C. § 434(a)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
2 U.S.C. § 432(c)(5)
2 U.S.C. § 439a(b)
11 C.F.R. § 102.9
11 C.F.R. § 103.3(b)
11 C.F.R. § 110.1(a)
11 C.F.R. § 110.1(b)
11 C.F.R. § 110.1(g)
11 C.F.R. § 110.1(k)(3)(ii)(B)
11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED: Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

¹ A number of violations occurred during 2003-2004. Between February 6, 2003 and October 13, 2004, Istook for Congress received excessive contributions, representing the range of dates for which the statute of limitations was calculated.

I. INTRODUCTION

This matter was generated by a Commission audit pursuant to 2 U.S.C. § 438(b) of the Istook for Congress Committee ("IFC") covering the period January 1, 2003 – December 31, 2004. The Commission approved the Report of the Audit Division on Friends of Ernest Istook on May 18, 2007 and, on May 23, 2007, a number of findings were referred to the Office of the General Counsel for enforcement.² Attachment 1. Based on the information set forth in the Final Audit Report ("FAR"), we recommend that the Commission make reason to believe findings as follows:

- IFC accepted apparent prohibited contributions in violation of 2 U.S.C. § 441b(a) (Finding 1; Attachment 1 at 8-9).
- IFC accepted contributions in excess of the limitations of the Federal Election Campaign Act of 1971, as amended, ("the Act") in violation of 2 U.S.C. § 441a(f) (Finding 2; Attachment 1 at 10-12).
- IFC used campaign funds to pay for what appeared to be personal expenses of the Candidate in violation of 2 U.S.C. § 439a(b) (Finding 3; Attachment 1 at 12-17).
- Ernest Istook used campaign funds to pay for what appeared to be personal expenses in violation of 2 U.S.C. § 439a(b) (Finding 3; Attachment 1 at 12-17).
- Kyle Loveless, IFC's campaign manager, used campaign funds to pay for what appeared to be personal expenses in violation of 2 U.S.C. § 439a(b) (Finding 3; Attachment 1 at 12-17).
- IFC failed to keep an account of and report certain disbursements in its disclosure reports regarding the enforcement by a campaign worker in violation of 2 U.S.C. §§ 432(c)(5), 434(b)(4), 434(b)(6)(A) and 11 C.F.R. § 104.3(b) (Finding 3; Attachment 1 at 12-17).
- IFC misstated its cash on hand, receipts, and disbursements in the years 2003 and 2004 in violation of 2 U.S.C. § 434(b) (Finding 4; Attachment 1 at 17-22).

² Istook for Congress was known as Friends of Ernest Istook during the period covered by the Audit, having changed its name on September 30, 2005.

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- IFC failed to file 48-hour Notices prior to the general election regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before the election in violation of 2 U.S.C. § 434(a) (Finding 8; Attachment 1 at 25-26).

Further investigation is not necessary to establish the violations referred by the Audit

Division and set forth in the FAR.

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• ***2 U.S.C. § 441a(f) Receipt of Excessive Contributions (Finding 2)***⁴

A review of contributions from individuals indicated that IFC failed to timely resolve excessive contributions totaling \$59,100. Most of these contributions resulted from improper redesignations and/or reattributions. IFC untimely refunded \$57,100 of these contributions.

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5 In addition to the personal use of campaign funds by the Candidate and the campaign
6 manager, IFC identified ~~unauthorized~~ expenditures made by, Jeremy Pinson, a campaign worker,
7 between October 9, 2003 and November 14, 2003, totaling over \$30,000 that were paid with
8 campaign funds. Although we have no specific information about the IFC's internal controls,
9 Jeremy Pinson apparently went into the campaign manager's desk drawer to take checks out of the
10 back of the campaign checkbook and obtained credit card data from statements that were on the
11 campaign manager's desk. In all, Mr. Pinson stole approximately 50 blank campaign checks,
12 several credit card numbers, and campaign letterhead stationery while working for IFC. He pled
13 guilty to five felony counts and one misdemeanor count of embezzlement based on these acts and
14 was sentenced March 24, 2004 to three years in prison and 15 years probation on five of the counts
15 and one year in jail with credit for time served for the other count. He will also make monetary
16 restitution in the amount of \$200 per month to IFC. While we acknowledge that Mr. Pinson's
17 actions appear to be knowing and willful violations of the Act, we recommend the Commission
18 take no action as to him. Mr. Pinson has a history of mental health issues and was sentenced earlier
19 this year to 15 years in federal prison for threatening to kill the President and lying to federal
20 agents. He was also convicted in March 2003 in North Carolina on six felony counts for breaking
21 into U.S. Rep. Sue Myrick's office and using her credit cards.

22 Although the Committee's failure to accurately keep an account of and report disbursements
23 stems at least in part from Pinson's embezzlement of IFC funds, IFC nevertheless violated the Act

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1 when it filed the resulting inaccurate reports. Under the Act, IFC, through its treasurer, was
2 required to account for disbursements and report them to the Commission. 2 U.S.C. §§ 432(c)(5);
3 434(b)(4); 434(b)(6)(A); 11 C.F.R. § 104.3(b). Committee treasurers are responsible for the timely
4 and complete filing of disclosure reports and for the accuracy of the information contained therein.
5 See 11 C.F.R. § 104.14(d). The failure to implement adequate internal control procedures over
6 Committee finances (e.g., regular audits, control procedures over receipts and disbursements,
7 segregated duties, or periodic review of finances) is a consideration when determining Committee
8 liability. See MUR 5872 (Jane Hague for Congress); MUR 5721 (Lockheed Martin Employees'
9 PAC); MUR 5811 (Doggett for U.S. Congress); MUR 5812 (Ohio State Medical Association
10 PAC); MUR 5813 (Georgia Medical PAC); and MUR 5814 (Lamutt for Congress).

11 Because IFC and its treasurer are responsible for complying with the Act, they are
12 responsible for reporting violations that resulted from IFC's lack of internal controls.⁶ IFC has
13 admitted that Pinson made unauthorized disbursements and that IFC failed to report those
14 disbursements. Thus, we recommend that the Commission find reason to believe that Istook for
15 Congress and James R. Hale, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(c)(5),
16 434(b)(4), 434(b)(6)(A) and 11 C.F.R. § 104.3(b) by failing to keep an account of and report
17 certain disbursements in the Committee's disclosure reports.

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⁶ The Commission has since created a safe harbor from monetary penalties for committees that have five basic internal controls in place at the time of embezzlement, immediately inform law enforcement and the Commission of the embezzlement, and voluntarily amend their reports to correct the inaccuracies. See Statement of Policy; Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695 (April 5, 2007). In this case, there is no information indicating whether IFC segregated duties, regularly undertook audits, had control procedures over disbursements, conducted periodic review of its finances, or had any other internal controls in place.

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III. RECOMMENDATIONS

1. Open a MUR in AR 06-03;
2. Find reason to believe that Istook for Congress and James R. Hale, in his official capacity as treasurer violated 2 U.S.C. § 441b(a) by accepting apparent prohibited contributions;
3. Find reason to believe that Istook for Congress and James R. Hale, in his official capacity as treasurer violated 2 U.S.C. § 441a(f) by accepting contributions in excess of the limitations of the Act;
4. Find reason to believe that Istook for Congress and James R. Hale, in his official capacity as treasurer violated 2 U.S.C. § 439a(b) by using campaign funds for personal expenses of the Candidate;
5. Find reason to believe that Ernest Istook violated 2 U.S.C. § 439a(b) by using campaign funds for personal expenses;
6. Find reason to believe that Kyle Loveless violated 2 U.S.C. § 439a(b) by using campaign funds for personal expenses;
7. Find reason to believe that Istook for Congress and James R. Hale, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(c)(5), 434(b)(4), 434(b)(6)(A) and 11 C.F.R. § 104.3(b) by failing to keep an account of and report certain disbursements in its disclosure reports regarding the embezzlement by a campaign worker;

- 1 8. Find reason to believe that Istook for Congress and James R. Hale, in his official
2 capacity as treasurer violated 2 U.S.C. § 434(b) by ~~maintaining~~ its cash on hand, receipts
3 and disbursements in years 2003 and 2004;
- 4 9. Find reason to believe that Istook for Congress and James R. Hale, in his official
5 capacity as treasurer violated 2 U.S.C. § 434(a) by failing to file required 48-hour
6 notices;
- 7 10.
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12 11. Approve as Factual and Legal Analysis the Report of the Audit Division on Istook for
Congress, dated May 18, 2007; and
- 13 12. Approve the appropriate letters.

14 Thomasenia P. Duncan
15 General Counsel


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18 12/11/07
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20 Date

21 BY:

22 
23 Ann Marie Terzaken
24 Associate General Counsel

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26 Sidney Locke
27 Assistant General Counsel
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April J. Sands
Attorney

Attachments:

1. Report of the Audit Division on Istook for Congress

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Report of the Audit Division on Friends of Ernest Istook

January 1, 2003 – December 31, 2004

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Committee (p. 2)

Friends of Ernest Istook (FOEI) is the principal campaign committee for Ernest Istook, Republican candidate for the U.S. House of Representatives from the state of Oklahoma, 5th District. FOEI is headquartered in Oklahoma City, OK. For more information, see chart on the Campaign Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 890,840
○ Contributions from Political Committees	799,470
○ Offsets to Expenditures	22,495
○ Other Receipts	1,165
○ Total Receipts	\$ 1,713,970
• Disbursements	
○ Operating Expenditures	\$ 1,125,484
○ Refunds	7,000
○ Contributions to Other Committees	277,100
○ Total Disbursements	\$ 1,409,584

Findings and Recommendations (p. 3)

- Receipt of Prohibited Contributions (Finding 1)
- Receipt of Excessive Contributions (Finding 2)
- Personal Use of Campaign Funds (Finding 3)
- Misstatement of Financial Activity (Finding 4)
- Disclosure of Receipts (Finding 5)
- Disclosure of Disbursements (Finding 6)
- Reporting of Debts and Obligations (Finding 7)
- Failure to File 48-Hour Notifications (Finding 8)
- Untimely Deposit of Contributions (Finding 9)
- Disclosure of Form 3Z-1 (Finding 10)

¹ 2 U.S.C. §438(b).

**Report of the Audit Division
on
Friends of Ernest Istook**

January 1, 2003 – December 31, 2004

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Part I

Background

Authority for Audit

This report is based on an audit of the Friends of Ernest Istook (FOEI), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

This audit examined²:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

² This audit is based on reports filed prior to when FOEI was notified of the audit on April 25, 2005. The review of amended reports filed on August 29, 2005 indicates that FOEI corrected some of the reporting discrepancies identified in this audit.

Part II

Overview of Campaign

Campaign Organization

Important Dates	Friends of Ernest Istook³
• Date of Registration	May 14, 1993
• Audit Coverage	January 1, 2003 – December 31, 2004
Headquarters	Oklahoma City, OK
Bank Information	
• Bank Depositories	3
• Bank Accounts	2 Checking and 1 Money Market
Treasurer	
• Treasurer When Audit was Conducted	James R. Hale
• Treasurer During Period Covered by Audit	James R. Hale
Management Information	
• Attended FRC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2003	\$ 4,470
○ Contributions from Individuals	890,840
○ Contributions from Political Committees	799,470
○ Offsets to Expenditures	22,495
○ Other Receipts	1,165
Total Receipts	\$ 1,713,970
○ Operating Expenditures	1,125,484
○ Refunds	7,000
○ Contributions to Other Political Committees	277,100
Total Disbursements	\$ 1,409,584
Cash on hand @ December 31, 2004	\$ 308,856

³ FOEI changed its name to Istook for Congress on September 30, 2005.

Part III

Summaries

Findings and Recommendations

Finding 1. Receipt of Prohibited Contributions

FOEI received contributions totaling \$11,825 from corporations, limited liability companies (LLC), and a labor organization. Contributions from unions, corporations and from LLCs that elect to be treated as corporations under IRS rules are prohibited. FOEI untimely refunded \$8,075 of these contributions. In response to the interim audit report recommendation, FOEI provided copies of additional negotiated refund checks totaling \$2,750 and provided evidence that one of the contributions was not prohibited. As a result, the amount of prohibited contributions received by FOEI was reduced to \$10,825. (For more detail, see p. 5)

Finding 2. Receipt of Excessive Contributions

A review of contributions from individuals indicated that FOEI failed to timely resolve excessive contributions totaling \$59,100. Most of these excessive contributions resulted from improper redesignations and/or reattributions. FOEI untimely refunded \$57,100 of these contributions. In response to the interim audit report recommendation, FOEI stated that they have issued refund checks for the remaining \$2,000 and will provide copies as soon as the checks clear the bank. (For more detail, see p. 6)

Finding 3. Personal Use of Campaign Funds

The Audit staff identified expenditures totaling \$2,936 paid by FOEI for what appeared to be personal expenses. Of this amount, the Candidate and the campaign manager reimbursed \$2,615 to FOEI prior to the interim audit report. In response to the interim audit report recommendation, FOEI provided a copy of a negotiated reimbursement check from the Candidate for \$3,189 and a signed statement from the campaign manager acknowledging that expenditures totaling \$4,135 were for his personal use and would be reimbursed to FOEI. For the remaining amount \$1,997 (\$2,936-\$2,615-\$3,189+\$4,135), FOEI provided evidence that the expenditures were not for personal use.

In addition to the amounts above, FOEI identified unauthorized expenditures made by a campaign worker totaling \$30,504 that were paid with campaign funds. The campaign worker was apprehended and prosecuted. The bank partially reimbursed FOEI for checks processed with a false signature. No further comments were provided with regard to this matter. (For more detail, see p. 9)

Finding 4. Misstatement of Financial Activity

FOEI had material misstatements of reported activity in both years covered by the audit. In 2003, FOEI understated its disbursements. In 2004, FOEI understated its receipts and disbursements. As a result of these misstatements, FOEI also reported incorrect cash-on-hand amounts in both years. FOEI filed amended reports after notification of the audit

that corrected the misstatement of receipts in 2004; however, disbursements in both years and cash-on-hand amounts were still misstated. In response to the interim audit report recommendation, FOEI stated that amended reports would be filed by May 31, 2007 to correct the remaining misstatements. (For more detail, see p. 14)

Finding 5. Disclosure of Receipts

A review of contributions from political committees revealed FOEI did not accurately disclose the required information. FOEI filed amended reports after notification of the audit that materially corrected the disclosure of these items. (For more detail, see p. 18)

Finding 6. Disclosure of Disbursements

A review of disbursements revealed that FOEI failed to disclose or inaccurately disclosed the required information. FOEI filed amended reports after notification of the audit that corrected some but not all of the disclosure discrepancies. In response to the interim audit report recommendation, FOEI stated that amended reports would be filed by May 31, 2007 to correct the disclosure of disbursements. (For more detail, see p. 18)

Finding 7. Reporting of Debts and Obligations

A review of operating expenditures revealed that FOEI failed to report debts and obligations owed to six vendors. In response to the interim audit report recommendation, FOEI stated that amended reports would be filed by May 31, 2007 to correct the reporting of debts and obligations. (For more detail, see p. 20)

Finding 8. Failure to File 48-Hour Notifications

FOEI failed to file 48-hour notices prior to the general election for 20 contributions totaling \$26,250. In response to the interim audit report recommendation, the FOEI treasurer provided a statement wherein he acknowledged that procedures to ensure the filing of 48-hour notices may have not always been followed. (For more detail, see p. 21)

Finding 9. Untimely Deposit of Contributions

A review of contributions revealed FOEI did not timely deposit contributor checks. In response to the interim audit report recommendation, the FOEI treasurer provided a copy of a previously submitted statement wherein he acknowledged that procedures to ensure the timely deposit of contributions may have not always been followed. (For more detail, see p. 22)

Finding 10. Disclosure on Form 3Z-1

FOEI filed Form 3Z-1 (Consolidation Report of Gross Receipts for Authorized Committees) with its 2003 July Quarterly and 2003 Year End Reports but did not disclose the correct financial information. In response to the interim audit report recommendation, the FOEI treasurer provided a copy of a previously submitted statement wherein he explained that the error was due to a misunderstanding of the new filing requirement and that steps have been taken to ensure future compliance. (For more detail, see p. 23)

Part IV

Findings and Recommendations

Finding 1. Receipt of Prohibited Contributions

Summary

FOEI received contributions totaling \$11,825 from corporations, limited liability companies (LLC), and a labor organization. Contributions from unions, corporations and from LLCs that elect to be treated as corporations under IRS rules are prohibited. FOEI initially refunded \$8,075 of these contributions. In response to the interim audit report recommendation, FOEI provided copies of additional negotiated refund checks totaling \$2,750 and provided evidence that one of the contributions was not prohibited. As a result, the amount of prohibited contributions received by FOEI was reduced to \$10,825.

Legal Standard

A. Receipt of Prohibited Contributions – General Prohibition. Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Labor Organizations;
 - National Banks;
 - Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and
 - Foreign Nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence; foreign governments and foreign political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b)). 2 U.S.C. §§441b, 441c, 441e, and 441f.

B. Definition of Limited Liability Company. A limited liability company (LLC) is a business entity recognized as an LLC under the laws of the state in which it was established. 11 CFR §110.1(g)(1).

C. Application of Limits and Prohibitions to LLC Contributions. A contribution from an LLC is subject to contribution limits and prohibitions, depending on several factors, as explained below:

1. **LLC as Partnership.** The contribution is considered a contribution from a partnership if the LLC chooses to be treated as a partnership under Internal Revenue Service (IRS) tax rules, or if it makes no choice at all about its tax status.

- A partnership contribution may not exceed \$2,000 per candidate, per election, and it must be attributed to each lawful partner. 11 CFR §110.1(a), (b), (e) and (g)(2).
2. **LLC as Corporation.** The contribution is considered a corporate contribution—and is banned under the Act—if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are traded publicly. 11 CFR §110.1(g)(3).
 3. **LLC with Single Member.** The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1(g)(4).

Facts and Analysis

FOEI accepted 24 contributions totaling \$11,825 from apparent prohibited sources. Of these, 19 contributions totaling \$7,075 were from corporations, 4 contributions totaling \$3,750 were from LLCs, and \$1,000 was from a local union organization. For funds contributions from corporations, the Audit staff verified the corporate status of the entities at the time the contribution was made with the Oklahoma's Secretary of State. For those contributions from LLCs, FOEI could not demonstrate whether the entities were taxed as a corporation or a partnership under the rules of the Internal Revenue Service (IRS). If the entities are treated as corporations by the IRS, their contributions represent prohibited corporate contributions. It should also be noted that FOEI did not establish a separate account for questionable contributions; however, FOEI maintained a sufficient balance in its bank account to refund the prohibited contributions.

This matter was discussed with the treasurer at the exit conference. The Audit staff provided a schedule of the apparent prohibited contributions. In response, the treasurer untimely refunded \$8,075. For the apparent prohibited contributions from LLCs totaling \$3,750, the treasurer provided copies of letters sent to the LLCs requesting that they verify their tax filing status.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended FOEI take the following action:

- Provide evidence demonstrating that the remaining contributions totaling \$3,750 were not prohibited, or were timely refunded. Such evidence should have included documentation indicating their filing status with the IRS or copies of the front and back of timely negotiated refund checks; or
- Refund \$3,750 to the contributors and provide evidence of such refunds (copies of front and back of negotiated refund checks); or
- If funds were not available to make necessary refunds, disclose the contributions requiring refunds on Schedule D (Debt and Obligations) until funds became available to make the refunds.

In response to the interim audit report recommendation, FOEI provided copies of additional negotiated refund checks totaling \$2,750. FOEI also provided evidence that one of the contributions was not prohibited. As a result, the amount of prohibited contributions received by FOEI was reduced to \$10,825.

Finding 2. Receipt of Excessive Contributions

Summary

A review of contributions from individuals indicated that FOEI failed to timely resolve excessive contributions totaling \$59,100. Most of these excessive contributions resulted from improper redesignations and/or retributions. FOEI untimely refunded \$57,100 of these contributions. In response to the interim audit report recommendation, FOEI stated that they have issued refund checks for the remaining \$2,000 and will provide copies as soon as the checks clear the bank.

Legal Standard

A. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person. 2 U.S.C. §441a(a)(1)(A) and 11 CFR §110.1(a) and (b).

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- return the questionable contribution to the donor; or
- deposit the contribution into its federal account and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

The excessive portion may also be redesignated to another election or reattributed to another contributor as explained below.

C. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(5).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

Also, the committee may presumptively redesignate the excessive portion of a general election contribution back to the primary election if the amount redesignated does not exceed the contributor's primary net debt position.

The committee is required to notify the contributor in writing of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the

option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

D. Reattribution of Excessive Contributions. When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- the committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by each contributor; or
- refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.5(b)(3).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- how the contribution was attributed; and
- that the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

Facts and Analysis

A review of contributions from individuals indicates that FOEI failed to timely resolve excessive contributions totaling \$59,100. Of these, FOEI untimely refunded \$7,000 of the excessive amount prior to the audit. It should be noted that FOEI maintained a sufficient balance in its bank account to refund the excessive contributions. Most of the excessive contributions were received prior to the primary election and are excessive for one of the following reasons:

Contribution by check with two names imprinted- FOEI failed to timely resolve excessive contributions totaling \$18,000. These contributions were identified as excessive because they were made by a check imprinted with two names and signed by only one of the individuals. In most cases, FOEI attributed the contribution to both individuals whose names are imprinted on the check or designated the contribution to a single contributor for both elections. Such action requires that within 60 days of the contribution, FOEI obtain a signed reattribution or redesignation from the contributors or inform the individuals of how the contribution was presumptively reattributed or redesignated and offer a refund of the excessive portion. FOEI did not provide any records relating to the redesignation or reattribution of these contributions. As a result, the entire amount of the contribution was attributed by the Audit staff to the individual that signed the check.

Contribution by check with one name imprinted- FOEI failed to timely resolve excessive contributions totaling \$40,500. These contributions were identified as excessive because they were made by a check imprinted with one name and in most cases were either designated by FOEI to both elections or were attributed by FOEI to two individuals. Such action requires that within 60 days of the contribution, FOEI obtain a signed reattribution or redesignation from the contributors or inform the individuals of

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how the contribution was presumptively redesignated and offer a refund of the excessive portion. FOEI records did not include a signed redesignation or a signature from the scanned individual acknowledging them as an owner/holder. Records also did not include notification to inform individuals of how the contribution was presumptively redesignated. As a result, the entire amount of the contribution was attributed by the Audit staff to the individual who signed the check.

This matter was discussed with the treasurer at the exit conference. The Audit staff provided a schedule of the excessive contributions. In response, the treasurer untimely refunded \$90,100 and indicated that the excessive portion from two contributors totaling \$2,000 was timely refunded or reallocated.⁴ However, documentation to support such action taken for the contributions from these two individuals was not provided.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that FOEI:

- Provide evidence demonstrating that the remaining \$2,000 (\$59,100 - \$50,100 - \$7,000) in contributions were not excessive. Such evidence should have included, but not be limited to, documentation that the contributors were notified in a timely manner of the actions taken by FOEI or that the excessive contributions were timely refunded or reallocated; or
- Refund the remaining \$2,000 to the contributors and provide evidence of such refunds (copies of front and back of negotiated refund checks); or
- If funds were not available to make necessary refunds, disclose the contributions requiring refunds on Schedule D (Debt and Obligations) until funds become available to make the refunds.

In response to the interim audit report recommendation, FOEI stated that they have issued refund checks for the remaining \$2,000 and will provide copies as soon as the checks clear the bank.

Finding 3. Personal Use of Campaign Funds

Summary

The Audit staff identified expenditures totaling \$8,936 paid by FOEI for what appeared to be personal expenses. Of this amount, the Candidate and the campaign manager reimbursed \$2,615 to FOEI prior to the interim audit report. In response to the interim audit report recommendation, FOEI provided a copy of a negotiated reimbursement check from the Candidate for \$3,189 and a signed statement from the campaign manager acknowledging that expenditures totaling \$1,135 were for his personal use and would be reimbursed to FOEI. For the remaining amount \$1,997 (\$8,936-\$2,615-\$3,189-\$1,135), FOEI provided evidence that the expenditures were not for personal use.

⁴ The remaining \$2,000 in excessive contributions are not eligible to be resolved by sending notifications pursuant to 11 CFR §110.1(k)(3)(ii)(B)(i).

In addition to the amounts above, FOEI identified unauthorized expenditures made by a campaign worker totalling \$30,584 that were paid with campaign funds. The campaign worker was apprehended and prosecuted. The bank partially reimbursed FOEI for checks processed with a false signature. No further comments were provided with regard to this matter.

Legal Standard

A. Use of Campaign Funds. Using campaign funds for personal use is prohibited. 2 U.S.C. §439a(b)(1).

B. Personal Use Defined. Personal use is defined as any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation, or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. 11 CFR §113.1(g).

Commission regulations list a number of purposes that would constitute personal use *per se*. This includes but is not limited to the use of campaign funds for:

- Household food items or supplies;
- Funeral, cremation or burial expenses;
- Clothing other than items of de minimis value used in the campaign such as T shirts or caps;
- Tuitions payments;
- Mortgage rent or utility payments;
- Admission to sporting events, concerts, theaters, or other form of entertainment unless part of a specific campaign or officeholder activity;
- Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization; and
- Salary payments to a family member (unless the family member is providing bona fide services). 11 CFR §113.1(g)(1)(i).

Where a specific purpose is not listed as personal use, the Commission makes a determination, on a case-by-case basis, whether an expense would fall within the regulation's definition of personal use. Examples of such other uses include:

- Legal expenses;
- Meal expenses
- Travel expenses; and
- Vehicle expenses. 11 CFR §113.1(g)(1)(ii).

C. Mixed Use. For those uses of campaign funds that involve both personal use and either campaign or office-holder activity, the committee must maintain a contemporaneous log or other record to document the dates and expenses related to the personal use of campaign funds. The log must be updated whenever campaign funds are used for personal expenses rather than for campaign or officeholder expenses. 11 CFR §113.1(g)(8).

D. Advisory Opinion 2001-3. Based on the circumstances presented in Advisory Opinion 2001-3, the Commission ruled that the use of a campaign vehicle for personal purposes that is equal to 5% of the vehicle's annual mileage is *de minimis* and would not require reimbursement to the committee.

Facts and Analysis

A. Personal Use. During the review of disbursements, the Audit staff identified expenditures totaling \$8,936 paid by FOEI for what appeared to be personal expenses. The expenditures included items that appeared to constitute personal use *per se* under 11 CFR §113.1(g)(1)(i) and expenses that required a determination on a case by case basis as to whether the expense would fall within the regulation's definition of personal use. Also included are certain personal expenses that were originally paid by FOEI and subsequently reimbursed by the Candidate and campaign manager.

1. Disbursements totaling \$2,204, for items specifically listed at 11 CFR §113.1(g)(1)(i), constituted personal use *per se*. These expenses included Broadway theatre tickets (\$600) and University of Oklahoma football tickets (\$1,604).
2. Disbursements totaling \$4,117, for items such as meals, travel, and vehicle expenses, required a determination on a case-by-case basis as to whether the expense fell within the regulation's definition of personal use. The Audit staff considered, among other things, the geographic location (the Candidate's home state, Washington, DC, or other locations) where the transaction occurred and the description of the goods or services. Certain expenditures were considered non-campaign related based on the type of expenses and the lack of documentation verifying that they were campaign or officeholder related. These expenditures requiring a determination on a case-by-case basis are discussed below:
 - Between February 13, 2004 and December 31, 2004, FOEI paid \$8,033 for costs associated with a leased vehicle. These costs consisted of the vehicle lease, insurance, maintenance, and fuel. The regulations at 11 CFR §113.1(g)(8) state that when campaign funds are used for expenses involving personal use, as well as campaign-related or officeholder use, a contemporaneous log or other record must be kept to document dates and expenses related to the personal use of the campaign funds. While FOEI did not keep a contemporaneous log of the mileage and use of the vehicle, the Committee prepared a log, in response to an exit conference, based on the candidate's day-to-day schedule for the time in question. FOEI acknowledged that it could not document all of the expenses for use of the vehicle, but maintained that it used the vehicle 85% for campaign-related or officeholder activity, and 15% for personal reasons based on the mileage driven. FOEI's calculation included an adjustment for events that were not pre-scheduled and for which the Committee had no supporting documentation.⁵ With respect to the 15% vehicle use for personal reasons, FOEI believed that some personal use was permissible as long as it was *de minimis*.

⁵ The Candidate stated: "Because that schedule does not document everything I did on those days—but only those things which had been scheduled in advance—I have added 10% to those 10,060 documented miles, to allow for those minimal use/campaign use events that were not pre-scheduled."

Absent documentation or other pertinent information sufficient to support the 10% ~~aided by FOEI for unscheduled campaign-related or officeholder activity~~, the Audit staff recalculated the vehicle ~~usage~~ as documented for each use. Based on documented usage, the Audit staff determined that the vehicle was used 80% for campaign-related and officeholder activity and 20% for personal reasons. Applying these ratios to the \$8,033 in costs associated with the leased vehicle, the Audit staff concluded that \$1,607 of the costs were for personal use.

With respect to FOEI's understanding that personal use of the vehicle was de minimis, the Audit staff concluded that the 15% use of the vehicle for personal reasons was beyond what the Commission has previously considered as de minimis.⁶

- Between December 29, 2003 and January 5, 2004, FOEI paid \$1,861 for costs incurred by the Candidate and his son in connection with a trip to New Orleans for the Sugar Bowl. These costs consisted of airfare (\$1,220), lodging (\$334), car rental (\$161), and meals (\$146). No invoices, receipts, minutes of meetings, agendas, or itineraries were available to document that these expenses were in connection with a campaign or officeholder related event.

The Audit staff discussed these expenses with FOEI at the exit conference and they provided the following response, "A significant campaign fundraiser was planned to take place at the Sugar Bowl game, where the University of Oklahoma and L-S-U were playing for the national title, attracting tens of thousands of Oklahomans to New Orleans. The original plans included a fundraising event or two, fact finding trips to the Port of New Orleans and the nearby commercial and military shipbuilding yards, plus a speaking engagement, with his son ... accompanying him to assist. (These visits were in connection with the Congressman's chairmanship over Customs and shipping issues and government shipbuilding programs.) Arrangements for the fundraising and fact finding portions fell apart at a late date (They were rescheduled and occurred in August.), but the speaking engagement (to a large crowd of Oklahomans) remained."

Absent documentation or other pertinent information sufficient to support that these expenses were for campaign-related or officeholder activity, the Audit staff maintains that these \$1,861 in expenses paid for by FOEI were for personal use.

- Between May 2, 2003 and June 16, 2004, FOEI paid \$649 for various items where no invoices, receipts, minutes of meetings, agendas, or itineraries were available to document that these expenses were in connection with a campaign or officeholder related event. The majority of these expenses were incurred outside the Candidate's home state or Washington, DC. These items included a meal at a New York City restaurant (\$288), airfare to Minneapolis-St. Paul for

⁶ See AO 2001-3

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the Candidate's wife (\$124), computer supplies purchased in Alexandria, Virginia (\$115), gasoline purchased en route to a University of Oklahoma (OU) vs. University of Texas football game (\$35), and flowers purchased in Oklahoma City (\$87).

In its response to the exit conference, FOEI stated that the meal at a New York City restaurant was a fundraising event coordinated with a New York Congressman, but did not provide documentation in support of this fundraiser. Additionally, FOEI conceded that it was unable to locate documentation to support charges for the airfare, computer supplies, and flowers. FOEI stated that the florist charge was evidently made by the campaign manager while the candidate was traveling. Finally, FOEI stated that the gasoline was purchased on a Texas trip for meetings at the OU-Texas game, but did not provide documentation in support of those meetings.

Absent documentation or other pertinent information sufficient to support that these expenses were for campaign-related and official business, the Audit staff maintains that these \$649 in expenses paid for by FOEI were for personal use.

3. Finally, the Audit staff identified additional disbursements, totaling \$2,615, which were subsequently reimbursed by the Candidate and the campaign manager in response to the exit conference. The Candidate reimbursed FOEI for expenses totaling \$1,597. This included \$760, primarily for charges made (and paid for by FOEI) on the campaign credit card that were also submitted for reimbursement directly to the Candidate and the Candidate's wife. The remaining \$837 were campaign credit card charges (paid for by FOEI) for personal items such as CD's, airfare, department store purchases, jewelry, groceries, gas, and membership fees where the Candidate stated he used the wrong credit card by mistake.

The campaign manager reimbursed \$1,018 for campaign credit card charges (paid for by FOEI) for personal items such as drug store purchases, a studio tour, lodging, dry cleaning, a hair cut, and flowers.

B. Unauthorized Expenditures. In November of 2003, FOEI identified unauthorized expenditures made by a campaign worker between October 9, 2003 and November 14, 2003, totaling \$30,504 that were paid with campaign funds. The campaign worker forged campaign checks totaling \$28,012 to himself and various vendors and made unauthorized campaign credit card charges totaling \$2,492. FOEI stated that the campaign worker evidently went into the campaign manager's desk drawer to get the checkbook, and obtained the credit card data from credit card statements that were on the campaign manager's desk. Not all the campaign's losses were detected and reported in time to be reimbursed, although \$21,173 of the bank fraud was reimbursed by First Fidelity Bank because the bank had accepted and processed checks with false signatures. The campaign worker was apprehended, prosecuted, and is currently serving a three-year sentence at an Oklahoma State Penitentiary for embezzlement. Subsequent to this activity, during the review of disbursements, the Audit staff identified additional forged checks totaling \$4,139 to various vendors.

The Audit staff discussed this matter with the treasurer at the exit conference and provided ~~advice~~ of the transactions noted above. In response, FOEI provided copies of cancelled checks, affidavits of unauthorized activity, bank reimbursement documentation, and news articles relating to the embezzlement.

Interim Audit Report Recommendation and Committee Response

A. Personal Use. The Audit staff recommended that FOEI provide evidence that the \$6,321 (\$8,936 - \$1,597 - \$1,018) in expenditures described above were campaign or officeholder expenses and not for personal use. Such evidence was to consist of:

1. invoices, receipts, minutes of meetings, agendas, itineraries;
2. names of organizations that sponsored trips;
3. any other written record which would document the specific campaign or political purpose of the charges; or
4. additional expense or mileage log documentation showing that the automobile lease was in conformance with AO 2001-3.

Absent such evidence, the Audit staff recommended that the Candidate reimburse \$6,321 to FOEI and provide evidence of the reimbursement (i.e. a copy of the front and back of the negotiated check).

B. Unauthorized Expenditures. Since the treasurer stated his intentions to close FOEI in the near future, the Audit staff recommended that FOEI submit any written comments it considered relevant.⁷

In response to the interim audit report recommendation, FOEI provided a copy of a negotiated reimbursement check from the Candidate for \$3,189 and a signed statement from the campaign manager acknowledging that expenditures totaling \$1,135 were for his personal use and would be reimbursed to FOEI. For the remaining amount \$1,997 (\$8,936-\$2,515-\$3,189-\$1,135), FOEI provided evidence that the expenditures were not for personal use. Therefore, the Audit staff concluded that FOEI made expenditures for the personal use of Candidate and campaign manager totaling \$4,939.

Finding 4. Misstatement of Financial Activity

Summary

FOEI had material misstatements of reported activity in both years covered by the audit. In 2003, FOEI understated its disbursements. In 2004, FOEI understated its receipts and disbursements. As a result of these misstatements, FOEI also reported incorrect cash-on-hand amounts in both years. FOEI filed amended reports after notification of the audit that corrected the misstatement of receipts in 2004; however, disbursements in both years and cash-on-hand amounts were still misstated. In response to the interim audit report

⁷ In a letter to the Reports Analysis Division filed on November 20, 2006, the Treasurer stated that FOEI was in the process of closing the committee.

recommendation, FOEI stated that amended reports would be filed by May 31, 2007 to correct the remaining misstatements.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash-on-hand at the beginning and of the reporting period;
- The total amount of receipts for the reporting period and for the election cycle; and
- The total amount of disbursements for the reporting period and for the election cycle;
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4), and (5).

Facts and Analysis

A comparison of reported activity to bank records revealed that FOEI had misstatements in 2003 and 2004. The following outlines the discrepancies for each year and explains misstatements identified during the audit.

2003 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @ January 1, 2003	\$ 738	\$ 4,470	\$ 3,732 Understated
Receipts	\$928,720	\$939,540	\$10,820 Understated
Disbursements	\$326,648	\$359,270	\$32,621 Understated
Ending Cash Balance @ December 31, 2003	\$602,810	\$584,741	\$18,069 Overstated

Disbursements – 2003

The understatement of disbursements was the net result of the following:

- **Disbursements Not Reported** + \$25,254
FOEI did not report fifty payments to vendors that should have been disclosed on their 2003 reports. Of this amount, a single payment to one vendor of \$13,500 for campaign research should have been disclosed on its 2003 Year End Report.
- **In Kind Contributions Not Reported** + 8,555
FOEI did not report In-Kind contributions received from nine political committees.
- **Disbursements Overstated** - 1,438
Amount includes two checks totaling \$857 that were erroneously reported twice and three reported amounts totaling \$581 that could not be traced to bank records or FOEI's check register.
- **Incorrect Reported Amounts (Net)** + 250
Amount includes ten checks where the amounts reported were different from the amount clearing the bank.

Total Net Understatement of Disbursements \$32,621

2004 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance @January 1, 2004	\$ 602,810	\$ 584,740	\$18,069 Overstated
Receipts	\$ 748,328	\$ 774,430	\$26,102 Understated
Disbursements	\$1,045,317	\$1,050,314	\$ 4,997 Understated
Ending Cash Balance @December 31, 2004	\$ 305,820	\$ 308,856	\$ 3,036 Understated

Receipts – 2004

The understatement of receipts was the result of the following:

• Receipts Not Reported	+	\$13,190
FOEI did not report contributions received from twelve political committees and one Indian nation.		
• In Kind Contributions Not Reported	+	7,323
FOEI did not report twelve In-Kind contributions received from eight political committees.		
• Incorrect Reported Amount	+	1,500
FOEI incorrectly reported a contribution of \$2,500 from a political committee as \$1,000.		
• Offsets to Operating Expenditures Not Reported	+	1,273
FOEI did not report two refunds from vendors.		
• Interest Received from Bank Not Reported	+	1,165
FOEI did not report the monthly interest received from the money market account.		
• Unexplained Difference	+	1,651
Total Understatement of Receipts		\$26,102

Disbursements – 2004

The understatement of disbursements was the net result of the following:

• Disbursements Not Reported	+ \$91,754
FOEI did not report operating expenditures totaling \$74,754 and contributions to other political committees totaling \$17,000 that were made thru the 30 Day Post-General Report period ending November 22, 2004.	
• Disbursements Overstated	- 95,707
The 2004 Year End ("YE") Report (11/23/04 – 12/31/04) disclosed disbursements totaling \$143,209. The correct amount of disbursements that should have been reported on the YE Report is \$53,491. Therefore, FOEI overstated disbursements on the YE Report by \$89,718 (\$143,209 - \$53,491). FOEI also reported three disbursements in other report periods totaling \$5,989 that could not be traced to the bank or FOEI's check register.	
• In Kind Contributions Not Reported	+ 7,323
FOEI did not report twelve In-Kind contributions received from eight political committees.	
• Incorrect Reported Amounts (Net)	+ 2,754
Amount includes forty-three checks where the amounts reported were different from the amount clearing the bank.	
• Unexplained Difference	- 1,127
Total Net Understatement of Disbursements	\$ 4,997

Cash-on-Hand

FOEI misstated cash-on-hand throughout 2003 and 2004 due to the errors described above. On December 31, 2004 the cash balance was understated by \$3,036.

FOEI filed amended reports after notification of the audit that corrected the misstatement of receipts in 2004; however, disbursements in both years and cash-on-hand amounts were still misstated.

The Audit staff discussed this matter with the treasurer at the exit conference. In response, the treasurer stated he would amend the appropriate reports as necessary.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that FOEI file amended reports for 2003 and 2004 to correct the remaining misstatements detailed above and amend its most recently filed report to correct the cash-on-hand balance. In response to the interim audit report

recommendation, FOEI stated that amended reports would be filed by May 31, 2007 to correct the remaining misstatements.\

Finding 5. Disclosure of Receipts

Summary

A review of contributions from political committees revealed FOEI did not accurately disclose the required information. FOEI filed amended reports after notification of the audit that materially corrected the disclosure of these items.

Legal Standard

A. Required Information for Contributions from Political Committees. For each contribution from a political committee, the reporting committee must provide the following information:

- The committee's name and address;
- The date of the receipt;
- The amount of the contribution; and
- The election cycle-to-date total. 11 CFR §104.3(a)(4) and 2 U.S.C. §434(b)(3)(B).

B. Election Cycle. The election cycle begins on the first day following the date of the previous general election and ends on the date of the next general election. 11 CFR §100.3(b).

Facts and Analysis

A sample review of contributions from political committees revealed FOEI did not accurately disclose the required information for 25% of the items tested. These errors include the inaccurate reporting of the contribution amount, the election cycle-to-date total or the contributor address. Many of the errors appear to have been caused by inconsistencies when entering contributor information into FOEI's database. FOEI filed amended reports after notification of the audit that materially corrected the disclosure of these items.

The Audit staff discussed this matter with the treasurer at the exit conference.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that FOEI submit written comments it considered relevant. FOEI provided no further comments on this matter.

Finding 6. Disclosure of Disbursements

Summary

A review of disbursements revealed that FOEI failed to disclose or inaccurately disclosed the required information. FOEI filed amended reports after notification of the audit that corrected some but not all of the disclosure discrepancies. In response to the interim

audit report recommendation, FOEI stated that amended reports would be filed by May 31, 2007 to correct the disclosure of disbursements.

Legal Standard

A. Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 an election cycle, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee²; and
- Purpose (a brief description of why the disbursement was made—see below). 2 U.S.C. §134(b)(5)(A) and 11 CFR §104.3(b)(4)(i).

B. Examples of Purpose.

- **Adequate Descriptions.** Examples of adequate descriptions of “purpose” include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, catering costs, loan repayment, or contribution refund. 11 CFR §104.3 (b)(4)(i)(A).
- **Inadequate Descriptions.** The following descriptions do not meet the requirement for reporting “purpose”: advance, election day expenses, other expenses, expense reimbursement, miscellaneous, outside services, get-out-the-vote, and voter registration. 11 CFR §104.3 (b)(4)(i)(A).

C. Credit Card Transactions. In the case of operating expenditures charged on a credit card, a committee must itemize a payment to a credit card company if the payment exceeds the \$200 aggregate threshold. The committee must also itemize, as a memo entry, any specific transaction charged on a credit card if the payment to the actual vendor exceeds the \$200 threshold. 11 CFR §§102.9(b)(2) and 104.9.

D. Contributions to Other Federal Candidates. When itemizing a contribution to another candidate, the committee must report the information listed above. For contributions to federal candidates, the committee must also include the office sought, state and, if applicable, Congressional district, and the election for which the contribution was made. Contributions to other candidates are included in the total for Line 21. 11 CFR §104.3(b)(3)(v).

Facts and Analysis

A sample review of operating expenditures itemized on Schedule B revealed that FOEI failed to disclose or inaccurately disclosed the required information for 30% of the items reviewed. The errors consisted of reporting the incorrect vendor name and address. The Audit staff also identified disbursements disclosed with a purpose that inaccurately described the reason for the disbursement. FOEI filed amended reports after notification of the audit that materially corrected the disclosure of these items.

² Payee means the person who provides the goods or services to the committee. 11 CFR §102.9(b)(2)(i)(A)

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A review of contributions made to other political committees revealed that FOEI did not disclose the office sought, the state, and/or congressional district of the recipient candidate for contributions totaling \$24,395. FOEI filed amended reports after notification of the audit that failed to correct the disclosure of these items.

A review of payments made to credit card companies revealed that FOEI did not disclose memo entries totaling \$83,284 on Schedule B. The credit cards used for these purchases were in the name of the Candidate and the transactions included but were not limited to airline tickets, lodging expenses, and meal expenses. These memo entries are required to disclose the name and address of the original vendor, as well as the date, amount, and purpose of the original purchase. FOEI filed amended reports after notification of the audit that corrected the disclosure of items totaling \$40,106.

A review of reimbursements made to the Candidate and his spouse also revealed that FOEI did not disclose memo entries totaling \$1,306 on Schedule B. The amount primarily includes reimbursements to the Candidate's spouse for meal expenses and an airline ticket. FOEI filed amended reports after notification of the audit that failed to correct the disclosure of these items.

The Audit staff discussed this matter with the treasurer at the exit conference. FOEI was provided schedules of the transactions noted above. In response, the treasurer stated he would amend the appropriate schedules as necessary.

Interim Audit Report Recommendation and Committee Response
The Audit staff recommended that FOEI file amended reports to correct the disclosure of the remaining disbursements as noted above. In response to the interim audit report recommendation, FOEI stated that amended reports would be filed by May 31, 2007 to correct the disclosure of disbursements.

Finding 7. Reporting of Debts and Obligations

Summary

A review of operating expenditures revealed that FOEI failed to report debts and obligations owed to six vendors. In response to the interim audit report recommendation, FOEI stated that amended reports would be filed by May 31, 2007 to correct the reporting of debts and obligations.

Legal Standard

A. Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. Separate Schedules. A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations.

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

A sample review of operating expenditures revealed that FOEI failed to report debts and obligations totaling \$18,731 on Schedules D (Debts and Obligations). These debts were owed to six vendors that provided primarily catering or printing services to FOEI. To determine the total amount of debts not reported, each debt was counted only once even if it was outstanding for several periods. Most of these debts and obligations should have been reported on FOEI's 2004 April Quarterly Report. FOEI filed amended reports after notification of the audit that failed to include the reporting of these items.

The Audit staff discussed this matter with the treasurer at the exit conference. In response, the treasurer stated he would amend the appropriate schedules as necessary.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that FOEI file amended reports to disclose these debts and obligations. In response to the interim audit report recommendation, FOEI stated that amended reports would be filed by May 31, 2007 to correct the reporting of debts and obligations.

Finding 8. Failure to File 48-Hour Notifications

Summary

FOEI failed to file 48-hour notices prior to the general election for 20 contributions totaling \$26,250. In response to the interim audit report recommendation, the FOEI treasurer provided a statement wherein he acknowledged that procedures to ensure the filing of 48-hour notices may have not always been followed.

Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate, including:

- Contributions from the candidate;
- Loans from the candidate and other non-bank sources; and
- Endorsements or guarantees of loans from banks. 11 CFR §104.5(f).

Facts and Analysis

A review of those contributions of \$1,000 or more that were deposited during the 48-hour notice filing period for the general election revealed that FOEI failed to file 48-hour

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notices for 20 contributions totaling \$26,250.⁹ These contributions were from 15 individuals and 5 political committees.

This matter was discussed with the treasurer at the exit conference. The Audit staff provided schedules of the contributions for which 48-hour notices were not filed. In response, the treasurer provided evidence that 48-hour notices for two of the contributions totaling \$2,250 were filed on November 2, 2004, the date of the general election. Since these two notices were untimely filed less than 48 hours before the general election, they are included with the \$26,250 in contributions that do not comply with the filing requirements for 48-hour notices. FOEI provided no further explanation for why the remaining 48-hour notices were not filed.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that FOEI provide evidence that these 48-hour notices were timely filed or provide any further comments it considered relevant. In response to the interim audit report recommendation, the FOEI treasurer provided a statement wherein he acknowledged that procedures to ensure the filing of 48-hour notices may have not always been followed.

Finding 9. Untimely Deposit of Contributions

Summary

A review of contributions revealed FOEI did not timely deposit contributor checks. In response to the interim audit report recommendation, the FOEI treasurer provided a copy of a previously submitted statement wherein he acknowledged that procedures to ensure the timely deposit of contributions may have not always been followed.

Legal Standard

A. Deposit of Receipts. The treasurer of a political committee must deposit contributions (or return them to the contributors without being deposited) within 10 days of the treasurer's receipt. 11 CFR §103.3(a).

Facts and Analysis

A sample review of contributions from political committees revealed FOEI did not timely deposit 73% of the contributor checks reviewed. Also, a sample review of contributions from individuals revealed that FOEI did not timely deposit 53% of the contributor checks reviewed. In determining the timeliness of contributions, the Audit staff compared the contributor check date with the bank deposit date.¹⁰ As a result, the Audit staff determined contributions were deposited up to 122 days late.

⁹ FOEI was inconsistent when recording the receipt date of contributions in their database. Dates entered into the database were the deposit date, the data entry date or the check date. The Audit staff reviewed deposits made during the 48-hour notice period to determine which contributions required a 48-hour notice.

¹⁰ The Audit staff calculated the date of receipt as three days from the date on the contributors check to allow for delivery of the contribution.

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The Audit staff discussed this matter with the treasurer at the exit conference. In response, the treasurer provided a statement that explained that "As a matter of internal control, the Committee has always stressed timely deposits of all contributions. The procedure is to copy all checks along with the deposit ticket and take the deposit of contributions to the bank daily when the deposit is large and/or at least once a week regardless of the size of the deposit. The deposit should be made by an individual separate from the individual recording the contribution. After reviewing the deposits it is apparent that this policy was not always followed. The Committee has again stressed timely deposits and now the individual making the deposit fax [sic] us a copy of the deposit ticket and the contributions are reviewed via internet and reconciled by our staff".

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that FOEI provide any further comments it considered relevant. In response to the interim audit report recommendation, the FOEI treasurer provided a copy of a previously submitted statement wherein he acknowledged that procedures to ensure the timely deposit of contributions may have not always been followed.

Finding 10. Disclosure of Form 3Z-1

Summary

FOEI filed Form 3Z-1 (Consolidation Report of Gross Receipts for Authorized Committees) with its 2003 July Quarterly and 2003 Year End Reports but did not disclose the correct financial information. In response to the interim audit report recommendation, the FOEI treasurer provided a copy of a previously submitted statement wherein he explained that the error was due to a misunderstanding of the new filing requirement and that steps have been taken to ensure future compliance.

Legal Standard

Special Reporting Requirements. Principal campaign committees of candidates for the U.S. House and the U.S. Senate must file FEC Form 3Z-1 as part of their July Quarterly and Year-End Reports in the year proceeding the year in which the general election for the office sought is held. The information in this form allows opposing candidates to compute their "gross receipts advantage" used to determine whether a candidate is entitled to an increased contribution limit. The following information must be disclosed:

1. Gross receipts to date for the primary and general elections,
2. Aggregate amount of contributions from personal funds of the candidate for the primary and general elections, and,
3. A calculation of gross receipts less the candidate's personal contributions for each election. 11 CFR §104.19.¹¹

¹¹ This regulation became effective January 27, 2003; as such, this audit period is the first that required the filing of this form.

Facts and Analysis

FOEI filed Form 3Z-1 with its 2003 July Quarterly and 2003 Year End Reports with incorrect financial information.

Using the electronic data provided by FOEI, the Audit staff determined gross receipts for the primary election of \$470,983 and for the general election of \$2,150 should have been disclosed on Form 3Z-1 included with its 2003 July Quarterly Report. FOEI disclosed gross receipts for the primary election of \$427,297 and no gross receipts for the general election.

For the 2003 Year End Report, Form 3Z-1 should have disclosed \$933,983 for the primary election and \$24,014 for the general election. However, FOEI disclosed no gross receipts on Form 3Z-1 included with its 2003 Year End Report. There were no personal contributions by the Candidate in 2003.

The Audit staff discussed this matter with the treasurer at the exit conference. The treasurer responded with a statement that explained the error was due to a misunderstanding of the new filing requirement and that steps have been taken to ensure future compliance.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that FOEI provide any further comments it considered relevant. In response to the interim audit report recommendation, the FOEI treasurer provided a copy of a previously submitted statement.